



Public-Private Partnerships and Design-Build

Proposed COEP Guidelines & Policy



July 17, 2012



Overview

- Requesting City Council's approval of two resolutions to formally adopt:
 - Local guidelines for a Public-Private Partnership (P3) program
 - Procurement policy for Design-Build as a method of construction procurement
- Requesting approval of companion item-ordinance amending Title 2 (Administration and Personnel), Chapter 2.94 (Regulation of Lobbying Activities), Section 2.94.090 (Restricted Activities) to amend type of solicitations in which persons are restricted from engaging in lobbying activities
 - Revises provisions relating to the Cone of Silence to add public-private partnership and design-build proposals



Intent

- Responsive to consistent City Council direction to identify and implement a range of modernized procurement methods
 - Potential to reduce costs and construction schedules
 - Encourage private investment
 - Facilitate individual project needs while providing best value to the City
 - Address variant needs of projects planned and programmed for execution in the near and immediate horizon



Public-Private Partnership Local Guidelines



P3: Purpose Established

- *Finding made by City Engineer that P3 provides/addresses:*
 1. Public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation and installation of municipal facilities, technology and other public infrastructure
 2. Existing methods of procurement are not sufficient for qualifying projects
 3. Inadequate resources to develop new facilities
 4. Financial incentives under state and federal laws
 5. Authorizes private entities/persons to make projects available to the public in less time and cost



P3: Qualifying Projects

- *A Public-Private Partnership Development project must meet the state definition of a “Qualifying Project”*
 1. Any recreational facility, public building, mass transit facility, vehicle parking facility, port facility, public work or other similar facility authorized by law currently available or to be made available to the City for use
 2. Unimproved, underdeveloped or underutilized properties owned by the City which may be developed or improved through a public-private partnership



P3: Process Overview

- Process may be initiated by either a **City Solicitation** or **Unsolicited Proposal** submitted by a Private Entity requesting review, consideration and approval
- A Solicited Proposal or Unsolicited Proposal requires a two-part proposal
 - Conceptual Proposal (Part 1)
 - Detailed Proposal (Part 2)
- Proposals shall contain specified information on:
 - Qualifications and experience
 - Project characteristics
 - Project Financing
 - Anticipated public support or opposition
 - Project benefit, value and compatibility
 - Identify facility, building or infrastructure improvements



P3: Proposal Review Fees

- Any private entity submitting an Unsolicited Proposal or a Competing Proposal shall pay a preliminary review fee to the City
 - \$5,000 fee consistent with State guidelines
 - If proposal is rejected, the review fee shall be returned to Private Entity; otherwise non-refundable
- If City agrees to proceed with evaluation of a Conceptual or Detailed Proposal, the City may engage professional advisors, attorneys or consultants with expertise relative to P3 proposals
 - Private Entity shall pay these fees directly as set out in interim agreement



P3: Part 1-Conceptual Proposal

- Proposals shall be packaged as follows:
 - Tab 1: Executive Summary
 - Tab 2: Private Entity and Team
 - Tab 3: Qualifications and Financial Capacity
 - Tab 4: Proposal
 - Tab 5: Project Analyses
 - Tab 6: Community Impact
 - Tab 7: Miscellaneous/Addenda



P3: Part 2-Detailed Proposal

- Detailed stage submissions shall supplement Conceptual proposal
 - Includes any omitted submittals
 - Addresses any substantial changes resulting from negotiations/refinements
- Mandatory Submissions
 1. Lifecycle cost analysis specifying methodology and assumptions of proposed start date, anticipated commitment of all parties, equity debt and other financing mechanisms
 2. Detailed analysis of financial feasibility including impact on similar facilities owned and operated by City
 3. Additional information as deemed appropriate



P3: Selection Criteria

- Qualifications and Experience
- Project Characteristics
- Project Cost and Financing
- Community Impact
- Other factors
 - May include proposed design of qualifying project, opportunity cost of taking an alternative action and plans to employ local contractors/residents



P3: Evaluation

- Engineering & Construction Management (Engineering) shall prepare a summary recommendation to the City Manager
- The Conceptual Proposal will be presented to City Council for approval



P3: Agreements

- Engineering is responsible for negotiating an interim or comprehensive agreement
 - Interim agreement allows a Private Entity to perform project-related activities related to Qualifying Project that may or may not be compensable
- **City Council shall approve any Interim or Comprehensive Agreement**



Design-Build Procurement Policy



Design-Build: Steps for Method Selection

- City Engineer must first determine the circumstances under which design-build method will produce best value
 - May engage professional advisors, attorneys or consultants having appropriate experience in analyzing potential design-build projects
 - Must establish the following:
 - 1) Define the project requirements
 - 2) Time constraints for the delivery of the project
 - 3) Ensure competitive procurement
 - 4) Establish capability to manage project



Design-Build: Steps for Method Selection

- Engineering will select or designate an engineer or architect independent of a design build firm to act as its representative for the duration of the work on a design-build project
 - Representative shall be a full-time employee of the City OR
 - An engineer or architect on the basis of demonstrated competence and qualifications as provided by the Local Government Code



Design-Build: Qualifying Facility Project

- May use design-build method for construction, rehabilitation, alteration or repair of a building or associated structure that is an improvement to real property
 - Does not include Civil Works Projects, which are permitted under state law separately



Design-Build: Qualifying Civil Works Project

- May use design-build method for construction, rehabilitation, alteration or repair of the following civil works projects:
 - a) Roads, streets, bridges, utilizes, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, airport runways and taxiways, storm drainage and flood control projects or transit projects;
 - b) Types of projects or facilities related to those described by paragraph (a) and associated with civil engineering construction



Design-Build: Qualifying Civil Works Project

- c) Buildings or structures that are incidental to projects or facilities that are described by paragraphs (a) and (b) and that are primarily civil engineering construction projects
- Selected projects must be single integrated projects and may not include multiple locations

Exception:

- Bus Rapid Transit system
- Water treatment plan that includes treatment facilities
- Well fields and pipe lines



Design-Build: Limitation

- According to state law, before September 1, 2013 the City may select up to three Civil Works projects per fiscal year
 - Slated to increase to six projects per fiscal year post 9/2013
 - The El Paso Water Utilities may have one project per fiscal year that if selected will count toward one of the projects the City is allowed
 - Additional projects may be allocated if the City will not use its allocation during a given fiscal year



Design-Build: Process Overview

- The procedure for the selection of a design-builder is contingent upon the project type:
 - **Facility Project-** Qualification based
 - Requires a Request for Qualifications (RFQ) and Design Criteria Package
 - **Civil Works Project-** Two Step Process
 - Phase One- Request for Qualifications (RFQ)
 - Phase Two-Request for Proposal (RFP) based on technical and cost proposals



Design-Build: Facility Project

- 1) Engineering shall prepare an RFQ that includes a scope of services and at a minimum the following information:
 - Project Site
 - Scope of Work
 - Budget
 - Schedule
 - Special Systems
 - Selection Criteria
 - Other information that may assist potential respondents



Design-Build: Facility Project

- 2) RFQ for a facility shall also include a Design Criteria Package and may include the following:
- Legal description of the project site
 - Survey information
 - Interior space requirements
 - Special material requirements
 - Material quality standards
 - Conceptual criteria
 - Special equipment requirements
 - Cost/budget estimates
 - Schedules
 - Quality assurance and control requirements
 - Site development requirements
 - Applicable codes/ordinances
 - Utility provisions
 - Parking requirements
 - Other requirements as applicable



Design-Build: Facility Project

- The City may request additional information as part of RFQ or as additional information once short-list of qualifying firms selected
 - Demonstrated competency and qualifications
 - Considerations of safety and durability of project
 - Feasibility of implementing project as proposed
 - Ability to meet schedules or costing methodology
 - Costing methodology according to state law means a firm's policies on:
 - Subcontractor markup
 - Definition of general conditions
 - Range of cost for general conditions
 - Policies on retainage and contingencies
 - Discount for prompt payment and expected staffing for administrative duties
 - Does not include a guaranteed maximum price or bid for overall design and construction



Design-Build: Facility Project

3) RFQ shall clearly identify the evaluation criteria and scoring system. Criteria shall be established to meet specific project needs and will include the following:

- Experience
- Technical competence
- Capability to perform
- Past performance (proposer & team)
- Conceptual project plan
- Financial capacity of design-build firm
- Other information as applicable

**Cost-related factors may not be considered as part of selection criteria*



Design-Build: Facility Project

- 4) Detailed instructions for submittal of Statement of Qualifications (SOQ) provided
- 5) Prior to posted deadline, industry review workshop conducted
- 6) City Engineer or designee shall assign members of selection committee
- 7) The submitted SOQs shall be distributed to selection committee for review and recommendations
 - Shall review written SOQ submittals and short-list consultants based on published selection criteria
- 8) The City Engineer or designee shall receive and tabulate all score sheets based on the published selection criteria in the RFQ document
 - Each consultant shall be ranked 1, 2, 3, etc. The sum of rankings shall be used as the official score
- 9) The City Engineer or designee shall notify no more than five (5) top-ranked firms to submit proposals



Design-Build: Facility Project

- 10) Selection committee may conduct oral interviews/presentations and assign points to short-list firms based on selection criteria in RFQ and committee's ranking evaluation
- 11) After evaluating and scoring each firm's response to RFQ proposal and results of any interview, the City will select highest ranked firm
- 12) City Engineer of designee shall notify highest ranked firm that City will commence contract negotiations
- 13) The City shall hold scoping meeting(s) and conducted fee negotiations
- 14) If City is unable to negotiate a satisfactory contract, the City shall, formally in writing, end all negotiations and proceed with the next firm in order or selection ranking until a contract is reached or negotiations with all ranked firms end
- 15) **Any final contract shall be posted for award by the City Council and shall not be effective until Council authorizes its execution**



Design-Build: Civil Works Project-Phase 1 (RFQ)

- 1) Engineering shall prepare a preliminary scope of work and request for qualifications that includes at a minimum the following information:
 - Information on civil works project site
 - Scope of work
 - Budget
 - Schedule
- 2) Statement of Qualifications (SOQ) submittals shall be formatted to follow sections listed in the evaluation form to expedite review
- 3) Prior to the posted deadline for qualification statements, Engineering shall conduct an industry review workshop
- 4) The City Engineer or designee shall assign the members of the selection committee



Design-Build: Civil Works Project-Phase 1 (RFQ)

- 5) The submitted SOQs shall be distributed to the committee for their review and recommendations
 - Shall review the written SOQ submittals and short-list the consultants
- 6) The City Engineer or designee shall receive and tabulate all score sheets based on the published selection criteria in the RFQ document
 - Each consultant shall be ranked 1, 2, 3, etc. The sum of rankings shall be used as the official score
- 7) The City Engineer or designee shall notify the selected qualified firms to submit proposals that contain additional information



Design-Build: Civil Works Project-Phase 2 (RFP)

- 1) The City shall request proposals from the qualified firms. A firm must submit a sealed technical proposal and a separate sealed proposal. The RFP must include:
 - a) Design Criteria Package
 - b) Geotechnical or baseline report or other information that provides form minimum geotechnical design parameters
 - c) Detailed instructions for preparing technical proposal and items to be included, a description of the form and level of drawings expected
 - d) Relative weighting of technical and cost proposals and formula by which proposals will be evaluated and ranked



Design-Build: Civil Works Project-Phase 2 (RFP)

- 2) The RFP shall also include a Design Criteria Package and may include the following as appropriate:
 - a) Cost of budget estimates
 - b) Information about the project site
 - c) Performance criteria
 - d) Special material requirements
 - e) Material quality standards
 - f) Initial design calculations
 - g) Known utilities
 - h) Capacity requirements
 - i) Quality assurance and control requirements
 - j) Type, size and location of structures
 - k) Notice of any ordinance, rules or goals adopted by the City relating to awarding contracts to historically underutilized businesses (HUB)
 - l) Other requirements as applicable



Design-Build: Civil Works Project-Phase 2 (RFP)

- 3) The Technical Proposal** is a component of the RFP and shall address:
- a) Project approach
 - b) Anticipated problems
 - c) Proposed solutions to anticipated problems
 - d) Ability to meet schedules
 - e) Conceptual engineering design
 - f) Other information requested



Design-Build: Civil Works Project-Phase 2 (RFP)

- 4) Detailed instructions on proposal format shall be provided
- 5) Prior to posted deadline for proposals, Engineering shall conduct an industry review workshop with the short-listed proposers to be advertised on the RFPD document
- 6) The City shall first open and evaluate each technical proposal according to criteria specified in RFP
 - City may reject as nonresponsive any proposer that makes a significant change to the composition of its team as initially submitted under the RFQ
- 7) The City Engineer or designee shall assign members of the selection committee
- 8) The submitted technical and cost proposals shall be distributed to the selection committee for their review and recommendations.
- 9) The selection committee shall hear presentations and conduct oral interviews and will assign points based on the selection criteria indicated on the RFP



Design-Build: Civil Works Project-Phase 2 (RFP)

- 10) After evaluating and scoring each responsive technical proposal and cost proposal, the City will select the highest ranked design-build firm
- 11) The City Engineer or designee shall notify the highest ranked firm that the City will commence contract negotiations and schedule meetings as appropriate
- 12) The City's Project Manager and Program Manager shall hold a scoping meeting(s) and conduct fee negotiations with the selected firm
- 13) If City is unable to negotiate a satisfactory contract, the City shall, formally in writing, end all negotiations and proceed with the next firm in order or selection ranking until a contract is reached or negotiations with all ranked firms end
- 14) **Any final contract shall be posted for award by the City Council and shall not be effective until Council authorizes its execution**



Stipend for Unsuccessful Design Build-Build Firms

- The City may offer to an unsuccessful design-build firm a stipend for preliminary engineering costs associated with the development of an unsuccessful proposal
 - Stipend must be one-half of one percent (.5%) of the contract amount specified in the initial RFP
 - If offer is accepted and paid, City may make use of any work product contained in the proposal, including the techniques, methods, processes and information contained in the proposal



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Comments/Questions